

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: **5 August 2022**

Public Authority: **Brent Council**
Address: **Civic Centre**
Engineers Way
Wembley
HA9 0FJ

Decision (including any steps ordered)

1. The complainant has requested information concerning the Stonebridge Park Complex, a property subject to redevelopment by Brent Council. The Council originally refused the complainant's main general request under section 12(1) of the Freedom of Information Act (FOIA), and withheld a Conditional Land Sale Agreement (CLSA) in its entirety under section 43(2) of the FOIA. In respect of other specific information requested, the Council advised that they did not hold such information. In the subsequent internal review the Council instead withheld the CLSA under regulation 12(5)(e)(commercial confidentiality) of the Environmental Information Regulations 2004 (EIR).
2. During the Commissioner's investigation, the Council provided the complainant with a revised response to her requests under the Environmental Information Regulations 2004 (EIR). The revised response refused the complainant's main general request as manifestly unreasonable under regulation 12(4)(b) of the EIR and provided the complainant with a redacted copy of the CLSA, with a small amount of information being withheld under regulation 12(5)(e) of the EIR. In respect of other specific information requested, the Council confirmed that they did not hold such information.

3. The Commissioner's decision is that the Council was entitled to rely on regulation 12(4)(b) for the reasons set out in this notice. The Commissioner finds that the public interest test favours maintaining the exception. The Commissioner is also satisfied that the redacted information in the CLSA is exempt by virtue of regulation 12(5)(e) and that the public interest balance favours maintaining the exception. The Commissioner is satisfied that the Council does not hold the other specific information requested, for the reasons set out in this notice.
4. However, as the Council originally incorrectly processed the complainant's request under the FOIA rather than the EIR, the Commissioner has found that the Council breached regulation 14(3) of the EIR. Since the Council has already voluntarily provided the complainant with a revised request response under the EIR, the Commissioner does not require the Council to take any steps to remedy this breach.
5. The Commissioner has also found that the Council failed to provide a satisfactory response to the complainant's request for annual reports concerning the Stonebridge Park Complex, in that they sought clarification of the request from the complainant which the complainant had previously given.
6. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation:
 - Issue a fresh response to the complainant's request for the annual reports.
7. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court, pursuant to section 54 of FOIA and may be dealt with as a contempt of court.

Background

8. The Commissioner notes that prior to the complainant's request, Brent Council (the Council) had detailed the background and timeline to the Bridge Park proposals on their website¹. They explained as follows:
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¹ [Bridge Park redevelopment | Brent Council](#)

'The Council's Bridge Park Community Leisure Centre and associated buildings require significant investment to bring them up to a reasonable standard and funds are not available to do this given that the Government has cut the Council's core funding by 79%. Bridge Park also suffers from the fact that it has an inefficient layout, poor heating and high running costs due to its structure.

In June 2013, Brent looked at options for developing the Unisys and Bridge Park sites for residential and commercial development to pay for a new sports centre. In February 2014, Brent consulted with local residents on four options for the layout of the new facility.

In June 2017, the Council agreed to sell part of its land to the owners of the Unisys buildings on the condition that the whole site would be redeveloped to include housing, a modern leisure centre and a new hotel including restaurants and bars.

In October 2017, the Council carried out a further six week consultation asking residents what they wanted to see as part of a modern leisure centre. This consultation included: 505 door to door interviews with residents representative in terms of age, gender and ethnicity questionnaires, a series of consultation meetings, drop in sessions and a presentation to the Harlesden Connects Forum. 286 responses from the questionnaire were received and in total over 200 people attended a consultation meeting, drop in session and forum.

Cllr Krupesh Hirani, Cabinet Member for Public Health, Culture & Leisure, said, 'We are keen to work with the community to deliver a modern facility that meets their current and future needs.

We aim to improve the area surrounding the Unisys buildings by working with the building owners to deliver a brand new Community Hub that will bring new jobs and opportunities to Stonebridge residents.

Due to the condition of the buildings at the Bridge Park site, the Council agreed to sell part of the land to an adjoining land owner. We recognise the work that the Harlesden People's Community Council have done in the past and realise that lots of people have an emotional attachment to the current Bridge Park Leisure Centre, given its history. We want to retain and enhance that by working with local people to ensure that we have a facility in the area that is purpose built and there for all the community to use for the foreseeable future. Residents were consulted in October and November 2017.

The Council considered all responses and agreed that the draft proposals should be enhanced to reflect the wishes of Stonebridge residents. We

are pleased to confirm that the new facility will be a vast improvement on what is currently on site.

We aim to provide a bigger and improved Community Hub including new leisure facilities, more space for businesses than is currently available, new accommodation for our vulnerable residents and bigger community space.

The Council is negotiating amendments to the contract to increase the use of the land in line with the feedback received from residents in the consultation. A paper will be put to Cabinet on 11 February 2019 to seek agreement for this proposal. All the proceeds from the sale will go into building and delivering the new facility.

You may be aware of the extensive amount of publicity surrounding the sale of the land. You may also be aware that the Harlesden People's Community Council (HPCC) has stated that they have an interest in the land and that the Council should be prohibited from selling it.

HPCC have therefore applied to the Land Registry to place a restriction against the Council's title. It is important to note that HPCC have not been successful in placing a restriction against the Council's title.

The Council has applied to the courts to determine this issue rather than the Land Registry/First-Tier Tribunal. Having the courts determine this issue was the quickest and most cost effective way of dealing with this matter.

The Council has made an interim application to court to obtain a declaration confirming that HPCC do not have an interest in the land.

At the same time as the legal proceedings, the Council is attempting to mediate the dispute to see if we can possibly come to an agreement and achieve a resolution to settle this matter. Whatever the court decides, the Council remains committed to working with the local community to ensure that any proposals taken forward are done with the aim of improving the lives of its residents'.

9. By way of context and counter-balance to the Council's above statement, the Commissioner notes that on 21 March 2019, the Guardian newspaper reported on a high court victory for 'one of the UK's largest black communities'. The newspaper noted that the dispute related to a site known as Bridge Park in Stonebridge, north-west

London, where Prince Charles opened what was then billed as Europe's largest black community centre in the 1980s².

10. The newspaper reported that the land was protected by covenant for community use, but the Council told the Guardian that the covenant had been released in 2012 as it was no longer enforceable. In June 2017 the Council entered into a CLSA with an offshore company, General Mediterranean Holdings (GMH), to redevelop the site for luxury housing and other purposes.

11. The Guardian stated that:

'The black community, including those who helped establish Bridge Park in the 1980s, objected and launched the fight to try and halt the selloff. Its vision involves setting up a technology centre and Europe's biggest black supermarket, along with other business, sport and education initiatives'.

12. The newspaper noted that the Manchester City footballer, Raheem Sterling, who grew up in the area, wanted to set up a football and learning academy as part of the community redevelopment of the site and in a tweet accused the Council of trying to sell off 'a key part of my childhood'.

13. The newspaper reported that:

'Those opposing the Council's move formed the Stonebridge Community Trust and unearthed crucial documents relating to the covenant and ownership of the site and applied to put a restriction on the multimillion pound land sale. The Council brought the case in the High Court hoping to get the restriction thrown out so the land sale could go ahead. But on Thursday the judge ruled against the Council and said the issue must go to a full trial. The Council was refused permission to appeal against the decision'.

14. The Guardian quoted one of the community campaigners, Jay Mastin, as saying:

'This is a momentous day. It has taken two years to get to this point. The Council has denied that we have a stake in this, but today we have been vindicated. We have had to work with our own resources. Now we

² [High court victory for group seeking to build 'black Canary Wharf' | London | The Guardian](#)

are one step closer to our vision of regeneration for the area, creating a black Canary Wharf. This is a very significant development for the UK's African and Caribbean community. We are all children of the Windrush generation. Bridge Park is an iconic place for the black community'.

15. In submissions to the Commissioner the Council advised that the development of the Stonebridge Park Complex (SPC) has been both complex and lengthy, with *'technical legal arguments'* which were considered by the High Court in *London Borough of Brent v Leonard Johnson (claiming to be a trustee of the Harlesden Peoples Community Council (1) Stonebridge Community Trust (HPCC) Limited (2) and Her Majesty's Attorney General (3) (the Court Case)*³.
16. The Council advised the Commissioner that by an application made to the High Court on 11 November 2019, the complainant applied to be joined as an interested party in the Court Case. Both the Council and the Defendants opposed the application. The Council advised that the Defendants in their application stated that:

'[Redacted] has no standing, she was never involved in dealings around the acquisition and construction of the Property. They also confirmed that although one of [redacted] concerns was that she had serious concerns about the way in which the Defendants were conducting the case, the Defendants stated by way of rebuttal that they were represented by Hogan Lovells and a Barrister who fully understood the complexity of the legal issues'.
17. The Council advised the Commissioner that it was also highlighted that neither the complainant, nor the organisation she purported to represent, had any standing in the matter, as neither were involved in the dealings around the acquisition and construction of the Property which the Defendants alleged gave rise to their beneficial interest.
18. The Council noted that much of the documentation sought by the complainant is, *'in essence, to establish that Stonebridge Park complex was held on trust by Brent Council'*. In the aforementioned Court Case the Council had sought a declaration that they were the sole legal and beneficial owner of the Property in order to establish that the Property is not held on trust and to establish and confirm that the Council alone owned the Property beneficially and legally.

³ [High Court Judgment Template \(bailii.org\)](https://www.bailii.org)

19. In the High Court judgement Mr Michael Green QC (sitting as a Deputy Judge of the Chancery Division) made a declaration that the Council are the sole legal and beneficial owner of the Property. It was held that the Property is owned by the Council legally and beneficially and, therefore, not on trust for the benefit of the Defendants (or any other party).
20. The Commissioner notes that the above judgement was upheld by the Court of Appeal on 18 January 2022⁴. Lord Justice Lewison noted that, *'the issue on this appeal is whether Brent LBC holds land wholly or partly on charitable trusts; either because such a trust arose when it acquired the land or because of the way in which money was raised for its conversion into a community centre'*. In dismissing Stonebridge's appeal, Lord Justice Lewison found as follows:

'The edifice of an unexpressed charitable trust is, in my judgement, an over-elaborate and unnecessary superstructure to impose on what was essentially a financial grant by one local authority to another to assist the latter to perform its statutory functions; with the latter being a contingent debtor in respect of repayment of the grant (plus overage) with interest; and the debt being secured by a legal charge. The GLC was content to protect its position by means of contractual obligations, fortified by a legal charge. In my judgement the judge was correct to find that no charitable trust was created on Brent's acquisition of the property'.

Request and response

21. On 16 February 2020, the complainant wrote to the Council and requested information in the following terms:

'I would like to make a Subject Access Request (SAR) for information under the Freedom of Information Act 2000 in relation to the activities of public authorities. I would like to see all information relating to the property: Stonebridge Park Complex. Harrow Road, London, NW19 0RG property Title No. NGL426015. Including the business units and the Technology House block.

Specifically: (the Commissioner has numbered the points for ease of reference)

⁴ [Brent v Johnson judgment \(judiciary.uk\)](https://www.judiciary.uk/decisions/court-of-appeal/brent-v-johnson-judgment/)

- 1) *Can you please provide me with Brent Council's plans for developing the Stonebridge Park Complex NW10 ORG.*
- 2) *Can you please provide me with any Contracts for sale of the Stonebridge Park Complex NW10 ORG made between 2016-2020.*
- 3) *Can you please provide me with Copies of the Business rates, the re-evaluation and any business rate cancellations for the 37 Stonebridge Park complex business unit for the years 2016-2020.*
- 4) *Can you please provide me with the document that lists all the individuals who are acting as trustees for the Stonebridge Park Complex NW10 ORG, whilst Brent Council are acting as custodians of the trust.*
- 5) *If you determine the sole trustee of the Stonebridge Park Complex is Mr Leonard Johnson, can you please provide a document that confirms this.*
- 6) *Can you please provide me with a copy of the Covenant document dated circa 1982 that was removed from the HM Land registry records by Officer Shave, for property address: Stonebridge Park Complex, Harrow Road, London, NW19 ORG property Title No. NGL426015.*
- 7) *Can you provide me the original copy of the title deed from 1982 for the property address: Stonebridge Park Complex, Harrow Road, London, NW19 ORG, an original copy of which would have the Name Mayor of Bromley on the title.*
- 8) *Can you please provide the document which records release of covenant and the transfer of the custodianship of the assets from the Mayor of Bromley to the Mayor of Brent.*
- 9) *Can you please provide the document which records the Release and transfer of the custodianship of assets from the trustees HPCC/BPCC or other trustee of the property to the Mayor of Brent.*
- 10) *Can you please provide the document proof of the GLC charge Release with the Mayor of Bromley which records the evidence of consultation with the transfer of the custodianship of the assets from the trustees HPCC/BPCC or other trustee of the property to the Mayor of Brent.*
- 11) *The Council has alleged that it is the sole owner of the Stonebridge Park Complex NW10 ORG property as alleged, can you please provide a document that confirms that Brent Council has the*

power and authority to disburse land or other assets owned by Steep Village War Memorial Club.

12) *Please provide me with annual reports for the Stonebridge Park complex for the most recent 3 years'.*

22. The Council responded to the request on 16 March 2020. They advised the complainant that the request was too wide and therefore fell within section 12 (costs limit) of the FOIA 2000, which provides that the Council does not need to comply with a request if the Council estimates that the cost of complying with the request would exceed the appropriate limit of 18 hours *'which are met in this request'*.

Consequently, the Council asked the complainant to be more specific about what information she would like *'outside of the specific enquiries relating to the Stonebridge complex that you have set out below'*.

23. The Council provided the following responses to the specific enquiries made by the complainant in her request (which the Commissioner has numbered for ease of reference):

1) With regard to the Council's plans for developing SPC, they advised that this information was publicly available and therefore exempt from disclosure under section 21 of the FOIA (information already reasonably accessible to the applicant). However, the response provided a link to the February 2019 Cabinet approval for the New Bridge Park Centre and attached the report itself which outlined the Council's plans for developing Bridge Park. The response also provided a link to the January 2017 Cabinet approval for entering the Bridge Park CLSA and attached the decision report itself for ease of reference.

2) With regard to the request for Contracts of sale of SPC made between 2016-2020, the Council confirmed that they had entered into a CLSA which the Council exchanged on 14 June 2017. However, the Council advised that as the CLSA is a confidential document, it was exempt from disclosure under Section 43(2)(prejudice to commercial interests) of the FOIA and the Council were *'unable to share the document with you without the specific consent of the other party to the CLSA'*.

3) With regard to the request for business rates for SPC, the Council advised that the Business rates database had been searched by the technical team and they had advised that there were no recent assessments for 37 Stonebridge Park, the only records dating back to 1995 and 1996.

- 4) The Council advised that '*as far as we are aware*' no such document listing all the individuals who are acting as trustees for the SPC whilst the Council acted as custodians of the trust, existed.
- 5) With regard to the complainant's request concerning Mr Leonard Johnson, the Council stated that they did '*not believe that the Stonebridge Park Complex is held on trust and as far as the Council is aware no such document exists*'.
- 6) With regard to the Covenant document dating circa 1982 for the SPC, the Council provided the complainant with a copy of the legal charge which contained the covenant in favour of the GLC, dated 21st June 1982.
- 7) The Council advised the complainant that the title to the property address, Stonebridge Park Complex, was never held by the London Borough of Bromley.
- 8) The Council advised as follows:

'The Property has never been owned by The London Borough of Bromley. The Council entered into a Legal Charge in favour of the Greater London Council. The London Borough of Bromley is the successor in title to the London Residuary Body, which is the successor in title in title to The Greater London Council. The Legal charge contained covenants. The entries registered against title number NGL426015 relating to this charge were cancelled by the Land Registry as a result of an application made by Brent Council accompanied by a DS1 Form sealed by The London Borough of Bromley. In the DS1 Form the London Borough of Bromley acknowledged that the property was no longer charged as security for the payment of sums due under the charge. The charge was therefore formally released'.
- 9) The Council informed the complainant that they did not believe that there had been a transfer of the custodianship of the assets from the trustees HPCC/BPCC or other trustee of the property to the Mayor of Brent and therefore no consultation about such a transfer had taken place. The Council advised the complainant that the documents relating to the cancellation of the entries relating to the GLC Charge that were previously against registered title NGL426015 were the Forms DS1 and DS2 which they attached to the response.
- 10)The Council repeated their response to point 9 of the request above.
- 11)The Council advised that as far as they were aware they did not have the power and authority to disburse land or other assets owned by Steep Village War Memorial Club.

- 12) The Council asked the complainant to clarify what annual reports she was seeking.
24. The complainant wrote to the Council on 18 March 2020 and advised that she needed further clarification of their response and would like an internal review '*since I haven't received the information I need*'. The complainant advised that she did not want to take up too much of the Council's time and stated that '*I am going to be very specific and I am making the requests in order of importance*'.
25. The complainant set out as follows: (the Commissioner has again numbered the points for ease of reference).
- 1) *You have provided a DS2 form showing the Lender was the London Borough of Bromley and where the Conveyancer/Solicitor was Susan Fraseir. Who cancelled charges on the property in favour of London Borough of Brent (Mayor of Brent). You have not provided details of all the land registry applications, or released copies of the documents requested. You have stated that London Borough of Bromley were not the owners of the property. The DS1 form (sec.5) gives the original Lenders/owners the Greater London Council (GLC) who were eventually succeeded by the Borough of Bromley. Is there a copy of an original title from 1982 with the GLC on the title? If so, can you provide me with a copy of original title for the Stonebridge Park Complex, Harrow Road, London NW10 0RG. I have a copy of a title dated 1982, Title No. NGL426015. Because the information is not in the land registry records, it is possible the title may have been amended after the 2012 transfer, with Mayor of Brent named on the title.*
 - 2) *Since the Bridge Park Complex property was originally held in trust by the London Borough of Brent on behalf of the Black Afro Caribbean Community Beneficiaries of the trust, if there is no title document for the Stonebridge Park Complex with GLC named on titled, it is imperative that the restrictive covenant which was previously attached to the title be revealed. There was a protective covenant placed on the property by GLC on or around 21st June 1982. This covenant and other documents were also removed from the Land Registry records. Brent Council confirmed Officer [redacted], acting on behalf of Brent Council, managed to remove the protective "Community" Covenant as well as remove the Charge for payment. Brent has restricted viewing of all the documents in the Land Registry records. The removal of these documents are clearly acknowledged in the Brent Council Report. Please refer to your Executive 17th June 2013 Report from Brent Council Director of Regeneration and Major Project/Bridge Park Development Proposal, please refer to Sec.2.1, which I am unable to attach.*

- 3) *Please provide me with a copy of the protective covenant that was removed from the land registry records. Also, please provide a copy of the DS1 (or AP1) form that was attached to the DS2 application dated 12th December 2012. Reference: JXH/104/72/ADV. Please provide me with any additional details of the cancellation of the entries of that registered charge in the land registry office. Also, please provide me copies of any other documents that were removed (and/or restricted) from the land registry records at that time, or following the DS1 application on 12th December 2012. It is in the public interest to know what information the protective covenant contained and what the other documents that were removed from the land registry record contained.*
 - 4) *You sent me a copy of a DS1 application made on the 29th November 2012 for transfer of property. Section 6 of this DS1 Form cancellation of entries relates to a registered charge, which is dated 29th November 2012 and only states " The lender acknowledges that the property identified in panel 2 is no longer charged as security for the payment of sums due under the charge". The DS1 form asserts that this form should be accompanied by either Form AP1 or Form DS2. Please could you provide the AP1 form or DS2 form that accompanied this application and a copy of the document which detailed the terms of the payment security. Brent has removed this document, from the land registry office.*
 - 5) *Additionally, because you have attached the Form DS2 Land Registry Application to cancel entries relating to a registered charge is dated 12th December 2012. You have given me partially the records of two separate applications, which are incomplete transfer documents. I really need to have accurate information, so please can you provide me with all the land registry forms for both applications.*
 - 6) *You sent me a detailed artist drawing of the design for a New Stonebridge Park Complex Leisure Centre, which Brent intends to build at the Stonebridge Park Complex. Could I have the Planning Application Reference and/or the planning Portal reference for this building.*
 - 7) *To clarify the request. Specifically, could you please provide the annual reports for the rent and service charge for the occupied Business units at Technology House and for business hire or rental at the Stonebridge Park Complex over the last 3 years. Could you also provide me with the itemised cost for any maintenance and repairs carried out on the business units over the last 3 years'.*
26. The Council provided the complainant with their internal review on 27 April 2020. They advised that the review had been conducted in line

with the applicable legislation, that being the FOIA 2000 and the Environmental Information Regulations (EIR) 2004 as well as guidance and decisions from the ICO. The Council advised that they had decided '*not to uphold your request for a review*'.

27. The Council advised the complainant that they had ascertained three points where she had expressed dissatisfaction with their response, and they addressed each of these in turn.
28. With regard to the land registry applications, the Council noted that the complainant had not asked for these in her request of 16 February 2020 and they had provided her with a copy of Title deed.
29. With regard to the protective covenant and its contents, the Council advised as follows:

'The Bridge Park Complex is solely owned legally and beneficially by the London Borough of Brent. There were covenants that formed part of the legal charge in favour of the GLC. You have a copy of the legal charge and you have therefore seen the covenants within it.

Although I understand you already have a copy of this, the attached office copy of the land registry title to Bridge Park dated 27 March 1997 shows the entries (at entries C4 and C5) relating to the 1982 legal charge that were registered against the title to Bridge Park, but which were later cancelled. As you will note, the entries that were cancelled do not specifically refer to a covenant. No separate application has been submitted to remove the covenant; and as far as the London Borough of Brent is aware, no other covenants have been removed from the title and the GLC charge is the only legal charge that has been removed from the title.

Furthermore, your original request sought the 'covenant document dated circa 1982'. Our original response confirmed the legal charge of 1982 contained details of what you refer to as the 'protected covenant', and in response to your clarification of information (above) we have confirmed that we hold no further information in relation to what you refer to as the 'protected covenants'.

30. With regard to the complainant's contention that they had provided her with partial records, the Council stated that they did not accept this contention. They advised that:

'The DS2 is the application to cancel entries relating to a registered charge. The DS1 officially discharges the charge and provides evidence that the London Borough of Bromley, in this case, has officially discharged the charge in favour of the GLC. The Land Registry, in actioning the DS2, would have extracted the relevant information from

the Land Charges register. These documents do not relate to any "transfer" as you suggest'.

31. The Council noted that although the complainant had stated that she was making a Subject Access Request (which are processed under the DPA 2018) their response was provided under the FOIA as the request *'related to the Complex, and did not seek any personal details relating to yourself pursuant to the Data Protection Act 2018'.*
32. The Council noted that they had applied three exemptions to the information requested by the complainant, specifically, sections 12, 21 and 43(2), and that as the complainant had made no representations regarding the same, the review had not considered the exemptions further, save that the Council noted that the public interest in relation to the disclosure of the CLSA was not addressed.
33. The review also found that the CLSA in respect of SPC related to land and accordingly constituted 'environmental information' for the purposes of the EIR 2004. The Council noted that the CLSA contains *'financial details including purchase price, the financial contributions, CIL, in addition to other commercial information which is commercial in nature and is also confidential'.* The Council therefore advised the complainant that the CLSA was exempt from disclosure under Regulation 12(5)(e)(confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest).
34. The Council acknowledged the following public interest factors in favour of disclosure of the CLSA:

'The Council accepts there is a public interest in openness and transparency in relation to its use of public funds, including aiding public understanding of the processes used by it and its commercial activities. The Council also accepts there is a clear public interest in information relating to the potential development of the Stonebridge Park Leisure complex and the financial dealings associated with this site, which has been evidenced by the public and media attention on this area'.
35. The Council advanced the following public interest factors in favour of withholding the CLSA:

'Information relating to the CLSA is commercial in nature and confidential. Contractually, the Council is subject to confidentiality obligations in relation to the CLSA. In addition, an obligation of confidence has been assumed by the Council under the common law of confidence.

The confidentiality provisions protects the legitimate economic interests of the Council and other parties to the agreement. It would also adversely affect the legitimate economic interests of the Council if developers and landowners were deterred from participating in property transactions because of the concern that commercially sensitive information would not be kept confidential. This would undermine the Council's duty to achieve best value in accordance with Section 123 of the Local Government Act 1972'.

36. Consequently, the Council was of the view that the public interest in favour of maintaining the regulation 12(5)(e) outweighed the public interest in disclosing the information in the CLSA.
37. The Council concluded the internal review by stating that having carefully considered all of the relevant factors, guidance and ICO decisions, they were of the view that in the absence of an exemption or restriction being applicable, they had provided the complainant with the relevant information requested, where it was held by the Council.

Scope of the case

38. The complainant contacted the Commissioner on 22 May 2020 to complain about the way her request for information had been handled.
39. In her complaint to the Commissioner the complainant explained that she made her information request to the Council as she is seeking a Judicial Review of the Council's '*decision to sell community land to an offshore corporation for luxury hotel and residential development*'. The complainant advised that she requested an internal review after '*important parts of my request were not divulged*'.
40. The complainant informed the Commissioner that:

'The Bridge Park Complex is in dispute and Brent Council has placed restriction on the viewing of the land registry records. The Council alleged they are the sole and beneficial owners and that the Council purchased the land. I am disputing those claims as I believe that Brent Council were acting as custodians of the trust. I made an FOI request in order to ascertain the full details of the agreement between the purchaser and Brent Council for the governance of the property. I want to find out if there was a more detailed covenant and/or other governing document made in relationship to the Council and the community cooperative Harlesden People Community Council (HPCC), and about the conditional land sales agreement (CLSA)'.

41. The complainant confirmed to the Commissioner that she wished to challenge all of the exemptions/exceptions applied by the Council to her request as she has '*alleged wrongdoing and breach of fiduciary duty surrounding the disputed land sale*'. The Commissioner notes that the complainant did not specifically dispute or challenge the exemptions/exceptions in her request to the Council for an internal review and whilst she was not obliged to do so, given the wide scope of her request, it would have been helpful (both to her and the Council) if she had done so.
42. The complainant contended to the Commissioner that she has a legitimate interest in the proposed development and the possibility of preserving the protective land restrictions. The complainant stated that '*my interest is both as a member of the public and a beneficiary of the Stonebridge Trust. Because my Community are the beneficiaries of the trust, the private CLSA is particularly prejudicial when other local authorities have published their CLSAs*'.
43. In their internal review of 27 April 2020, the Council correctly found that the CLSA relates to land and accordingly constitutes 'environmental information' for the purposes of the EIR 2004. Consequently, the Council withdrew the application of section 43(2) to the CLSA and instead withheld this document under regulation 12(5)(e) of the EIR.
44. However, in correspondence to the Council at the outset of his investigation, the Commissioner advised that as the subject and focus of the complainant's whole request related to land, specifically SPC and the Council's plans for developing the same, the request should have been processed under the EIR and not the FOIA.
45. In FER0306224 (February 2011), which concerned a request for information to Telford & Wrekin Council relating to the sale of a particular piece of land, the Commissioner found that all of the information within scope of the request constituted environmental information as defined under Regulation 2(1)(c) of the EIR. That was because it was information on measures and activities, affecting or likely to affect the elements of the environment and factors likely to affect those elements referred to in regulations 2(1)(a) and (b) of the EIR. In that case the planning application process was the activity under regulation 2(1)(c) which was likely to affect the landscape (as set out in regulation 2(1)(a)) upon which development may take place as a result of planning decisions by the Council.
46. Differently constituted Information Tribunals have found that information relating to planned developments would constitute environmental information and should therefore be considered under the EIR.

47. The Commissioner therefore asked the Council to provide an appropriately revised response to the complainant's request under the EIR rather than the FOIA. The Council helpfully provided the complainant with their revised response to her request of 16 February 2020 on 15 November 2021. The response correctly processed the request under the EIRs.
48. The Council advised the complainant that they were refusing her main request of 16 February 2020 under regulation 12(4)(b)(manifestly unreasonable) of the EIR. The Council disclosed to the complainant a redacted copy of the CLSA and confirmed that the redacted information was exempt from disclosure under regulation 12(5)(e)(confidentiality of commercial information). The Council also provided responses to each of the complainant's 12 ancillary requests attached to her main request of 16 February 2020.
49. The scope of the Commissioner's investigation has been to determine whether the Council correctly applied the aforementioned EIR exceptions to the complainant's information request.

Reasons for decision

50. Regulation 5(1) of the Environmental Information Regulations 2004 (EIR) states that:

'A public authority that holds environmental information shall make it available on request'.

51. Regulation 12 of the EIR states that:

'(1) Subject to paragraphs (2), (3) and (9), a public authority may refuse to disclose environmental information requested if –

(a) an exception to disclosure applies under paragraphs (4) or (5); and

(b) in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

(2) A public authority shall apply a presumption in favour of disclosure.

(4) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that –

(b) the request for information is manifestly unreasonable'.

52. The Commissioner considers that a request can be manifestly unreasonable either because it is vexatious or because it would incur unreasonable costs for a public authority or an unreasonable diversion of resources.
53. In their revised response of 15 November 2021 to the complainant's request, the Council advised that they were refusing the request as manifestly unreasonable, *'as it places a disproportionate burden on the Council, and would impose on limited staffing resources'*.
54. Regulation 12(4)(b) of the EIR is designed to protect public authorities from exposure to a disproportionate burden or an unjustified level of distress, disruption or irritation in handling information requests. In effect, it has similar application to sections 12 and 14 of the Freedom of Information Act, which act to refuse requests which exceed the appropriate limit and which are vexatious, respectively.
55. The EIR differ from the FOIA in that there is no specific limit set for the amount of work required by a public authority to respond to a request, as that provided by section 12 of the FOIA.
56. Specifically, the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the Fees Regulations) which apply in relation to section 12 of the FOIA are not directly relevant to the EIR because the cost limit and hourly rate set by the Fees Regulations do not apply in relation to environmental information. However, the Commissioner accepts that the Fees Regulations provide a useful starting point where the reason for citing regulation 12(4)(b) is the time and cost of a request, but they are not a determining factor in assessing whether the exception applies.
57. The Fees Regulations confirm that the costs associated with these activities should be worked out at a standard rate of £25 per hour per person. For local authorities, the appropriate limit is set at £450, which is the equivalent of 18 hours work.
58. It should also be noted that public authorities may be required to accept a greater burden in providing environmental information than other information.
59. The Commissioner considers that regulation 12(4)(b) sets a fairly robust test for a public authority to pass before it is no longer under a duty to respond. The test set by the EIR is that the request is 'manifestly unreasonable', rather than simply being 'unreasonable'. The Commissioner considers that the term 'manifestly' means that there must be an obvious or clear quality to the identified unreasonableness.
60. Specifically, the Council explained that:

*'You have requested to see **all** information relating to the Stonebridge Park Complex, this would involve determining what information the Council holds, locating the information and determining whether it is of any value, retrieving the information and extracting the information. Potentially it would include communications both internal and external/with third parties and searches of such email accounts to also establish the extent of communications held, in addition to reports etc'.*

61. In support of their contention that responding to the request would require a disproportionate use of resources, the Council listed the following points:

'a) the public scrutiny, and in turn publication of documents, surrounding the Stonebridge Park Complex (SPC) redevelopment has been extensive,

b) there will be substantial information associated with but not necessarily directly related to SPC,

c) given the length of time the development has been ongoing there will be volumes of documentation and communication connected to SPC, as well as a number of officers, both past and present, who may have been involved with SPC,

d) there will be information with third parties and in order to provide all correspondence, the Council, and its third parties, would need to go through several years of communication, meeting notes/discussions. Thereafter, we would need to collate the information and then redact any exempt information'.

62. The Council contended that the request would therefore place a disproportionate burden on the Council, and would impose on limited staffing resources. Accordingly, the Council refused the request on the grounds of it being manifestly unreasonable.
63. The Commissioner notes that the complainant's request was widely worded, being a request for *'all information'* relating to SPC. The scope of the request is not limited to any specific time period and nor was it restricted to information relating to the legal proceedings which were live at the time of the complainant's request.
64. In submissions to the Commissioner, the Council advised that discussions in relation to SPC have been ongoing in excess of 40 years, with reports going to various committees from as early as 1982/83. These discussions have included communications with:
- Various central government organisations and other institutions in regards to SPC's acquisition in the 1980s,

- Various parties in relation to the court proceedings that took place in the 1990s, and
 - Discussions regarding the Council's possession, ownership and legal interest from 2017-2022.
65. The Council advised that it is extremely difficult to estimate the volume of information held in relation to SPC, in part because of the length of time the matter has been ongoing for. By way of example, and to contextualise the volume of information held, the Council informed the Commissioner that in relation to the High Court proceedings there was an estimated 20 plus lever arch bundles before the court.
66. The Council confirmed that in order to identify and locate all the information requested by the complainant, they would need to search through the above historical information and then determine whether any of the information should be redacted under any exceptions.
67. The Commissioner considers that responding to such a generalised request of such breadth would impose a considerable burden on the Council and its limited staffing resources. The Commissioner is satisfied, based on the submissions provided by the Council and the wording of the request, that this burden would be a manifestly unreasonable one. Consequently, the Commissioner is satisfied that regulation 12(4)(b) is engaged in respect to the complainant's main overarching request.

Public interest test

68. The complainant provided the Commissioner with very detailed and lengthy submissions as to why she considers that the information requested (where it is held by the Council) should be disclosed in the public interest. Much of those submissions concerned the CLSA which the Council (at that point) were withholding under regulation 12(5)(e) of the EIR, and which the Commissioner addresses later in this notice. More generally, the bulk of the complainant's submissions were based on her contention that the Council held SPC on trust for the benefit of the Afro-Caribbean community.
69. The complainant explained that she intervened in the High Court action on behalf of the Afro-Caribbean community '*beneficiaries of the trust*'. The complainant believed that the community beneficiaries are the missing link in the High Court challenge, '*but it is impossible to make a case in the absence of fact, and provision of poor and partial information*'. The complainant contended that, '*the Afro Caribbean community beneficiaries of the trust do NOT want the sale to GMH (General Mediterrean Holdings) and cannot be compensated for the loss*

of the Complex and the service it does and could potentially provide to the community'.

70. The complainant contended that:

'The Afro Caribbean population are being systematically cleansed from Brent. They are a vulnerable group that need protection and community space and their community properties are instead routinely targeted and sold off cheaply. The ensuing gentrification will devastate the vulnerable Afro Caribbean community the property and covenant was supposed to protect. Brent Council also did not consult the community beneficiaries of the trust prior to the sale, which they are legally required by duty to do'.

71. The complainant further contended that:

'Brent Council acted in breach of trust in deliberately under-funding and allowing the degradation of the Community's property, and in not using the Community's property for the proper purposes, for over 30 years, resulting in significant dissatisfaction and complaints from local residents. The problem is the Local Authority has failed to separate their own property from that of the beneficiaries under their trusteeship. Brent Council's officers seem to be unaware of their duties to always act in the best interests of the vulnerable and marginalised Community and to ensure that the Community's assets are applied for its particular purposes, not for the purposes of an ultra vires concern, devised by the local authority officers and their private interest off-shore partners'.

72. The Commissioner recognises and appreciates the strongly held concerns which the complainant has about the Council's proposed plans for SPC. However, the Commissioner notes that much of her arguments are predicated on a misconception, namely that SPC was held on trust by the Council. As the High Court judgement (and recent Court of Appeal judgement) have held, the Council are the sole legal and beneficial owner of SPC and do not hold the property on trust for the benefit of any party.

73. In submissions to the Commissioner (which predated the Court of Appeal judgement), the Council advised that whilst the complainant's assertions about there being a trust in favour of the Afro Caribbean community were incorrect, *'it is worth noting, however, that the Council is bound by statute, and, as a local authority, the London Borough of Brent's very reason for being is to serve the community within the borough'.*

74. The Council advised the Commissioner that the High Court judgment, media publications and engagement which the Council has had with the

community at large, show that it is not the case that who the complainant describes as *'the community beneficiaries'* are the missing link in the High Court process. The Council stated that they had been *'fully transparent'* in relation to the matter, and where information was not privileged, confidential, prejudicial to proceedings or commercially sensitive, they had ensured that it has been made available to the public. The Council advised that they had undertaken at least two formal public consultations in 2013 and 2017 regarding the Bridge Park redevelopment. *'Furthermore, in 2019, Brent committed to setting up a resident advisory group to ensure that the New Bridge Park Centre responds to local priorities and ensured that local people, who might wish to have a say in how Bridge Park might ultimately be managed, had that input'*. The Council provided the Commissioner with a range of consultation and transparency documents pertaining to this matter.

75. The Council stated that SPC has been used for the benefit of the community, noting that, *'funding for Local Government has reduced significantly, which has created a strain on local resources'*. The Council drew the Commissioner's attention to their arguments in the High Court case, where the judgement noted that:

'The only way in which Brent says that it could fund the design and construction of a new leisure and community facility was by the sale of the majority part of the Site to an adjoining landowner, GMH. This is particularly the case, as [redacted] explained, after the significant reductions in Government funding for local authorities in 2011 and the substantial extra strain on resources through the increases in responsibilities for local authorities'.

76. In their revised (EIR) response to the complainant of 15 November 2021, the Council advised that they were mindful of the general public interest in transparency and accountability, and of the presumption in favour of disclosure of environmental information. However, they noted that the public interest in maintaining regulation 12(4)(b) lies in protecting public authorities from *'exposure to disproportionate burden or to an unjustified level of distress, disruption or irritation in handling information requests'*. On balance, the Council were of the view that the public interest in maintaining the exception outweighed the public interest in disclosure of the information requested in the complainant's overarching information request.
77. The Commissioner's guidance to public authorities on regulation 12(4)(b) makes clear that when refusing a request for information under this exception on the grounds of cost (i.e. disproportionate burden), public authorities should provide the requester with appropriate advice and assistance. The Commissioner notes with approval that the Council did exactly that in this case, in that they asked the complainant to be

more specific about what information she would like, *'including any dates and periods, and or types of documentation (outside of the specific enquiries relating to the Stonebridge complex that you have set out below, and or raised in the past)'*.

78. The Commissioner considers that any public interest attached to the complainant's overarching request for **all** information relating to SPC was largely restricted to information held by the Council which had a bearing on the issues being considered by the High Court at the time of the complainant's request, specifically whether or not the property was held on trust by the Council for the benefit of the Defendants (or any other party). That matter, and the public interest which it carried, was appropriately being addressed through the courts.
79. In submissions to the Commissioner the Council advised that their disclosure obligations in the Court Case were wide-ranging and included an obligation to provide by way of disclosure to the Defendants any documents that may assist its case as well as any documents that may harm its case in relation to specified issues. The Council advised that, *'a full and thorough search of the Council's archive and historic files was undertaken prior to trial. None of the information requested by [the complainant] was located. This finding (no documents to support her position) was reflected in the court case outcome of the trial and the declaration provided by the Judge'*.
80. Given that the Council had, at the time of the complainant's request, undertaken comprehensive and thorough searches and checks of the information which they held pertaining to SPC, the Commissioner considers that there would be little or no value in the Council effectively repeating such time consuming steps and efforts to respond to the complainant's overarching request. Any information held which would have assisted addressing the public interest behind the complainant's request, would have already been provided to the appropriate parties and to the Court for a determination of the legal issues.
81. Consequently, the Commissioner finds that the public interest in the generalised and unspecific information requested by the complainant in her overarching request, was comfortably outweighed by the public interest in protecting the Council from the disproportionate and unjustified burden and diversion of limited resources which responding to the request would have entailed.

Complainant's specific requests

82. As noted previously, in addition to her overarching information request, the complainant made a number of subsidiary requests for specific information in her request to the Council of 16 February 2020

(paragraph 21). The Council originally responded to each of these requests in their response of 16 March 2020, albeit erroneously under the FOIA. In their revised response to the complainant of 15 November 2021, the Council provided fresh responses to each of the requests under the EIR.

83. As the FOIA fees regulations do not apply under the EIR, there is no specific provision for the aggregation of substantially similar requests for environmental information. However, the Commissioner recognises that there may be occasions where it is permissible to consider a number of EIR requests together when deciding if they are manifestly unreasonable on the grounds of cost. This is in line with the Commissioner's approach to requests considered manifestly unreasonable on the grounds that they are vexatious, where the context in which they are made can be taken into account.
84. In this case the Commissioner notes that the complainant's primary request was for 'all information' relating to SPC. The complainant then went on to specify what information in particular she wished to be provided with. However, this specificity simply highlighted what she wanted her primary request to provide. That is to say, if the complainant's primary request was complied with by the Council, then her subsidiary requests would have been redundant.
85. It follows that if the Council was of the view that the complainant's primary request was manifestly unreasonable, then the complainant's subsidiary requests were also manifestly unreasonable and should have been refused as such under regulation 12(4)(b) by the Council.
86. However, as the Council chose to provide individual responses to the complainant's subsidiary requests (and the Commissioner recognises and appreciates that the Council were intending to be as helpful as possible to the complainant in so doing), the Commissioner considers that it is necessary for him to consider and address each of the responses below.

*Brent Council's plans for developing the Stonebridge Park Complex
NW10 ORG*

87. The Council advised that their most current plans in relation to SPC were already in the public domain and they provided the complainant with a link to the February 2019 Cabinet approval for the New Bridge Park Centre and the report itself which outlined the Council's plans for developing Bridge Park. The Council also included a link to the January 2017 Cabinet approval for entering the Bridge Park CLSA and attached the decision report itself for ease of reference.

88. The Council advised the complainant that if she was seeking *all* plans in relation to the development, then that information was exempt under regulation 12(4)(b) as to comply with such a request would require consideration of information covering many years and would present a disproportionate burden upon the Council and limited staff resources.
89. The Commissioner is satisfied that the Council was correct to refuse such a wide and generalised request as being manifestly unreasonable, for the reasoning previously explained above in respect of the complainant's overarching request.

Contracts for sale of the SPC made between 2016 -2020

90. The Council confirmed that they had entered into a CLSA which they had exchanged on 14 June 2017. In their original response of 16 March 2020 to the complainant's request (erroneously processed under the FOIA) the Council had withheld the CLSA in its entirety under section 43(2) (prejudice to commercial interests). In the revised EIR response, the Council provided the complainant with a redacted copy of the CLSA.
91. The Council confirmed that the redacted information in the CLSA was exempt under regulation 12(5)(e)(commercial or industrial information) and regulation 12(5)(b)(adversely affect the course of justice).
92. In submissions to the Commissioner the Council reconsidered their previous position and now accepted that the CLSA was not exempt from disclosure in its entirety. The Council stated that they were only seeking to withhold very limited information under regulation 12(5)(e) and had interpreted the use of the exception restrictively.
93. Having had sight of the disclosed redacted CLSA and the redacted information, the Commissioner is satisfied that the Council have redacted only very limited information from the CLSA. Specifically, the definitions of:
- Construction Costs Cap – Page 8
 - Professional Fees Contribution Cap – Page 17
 - RLV (Residual Land Value) – Page 19
 - Development Financial Appraisal – Pages 124 and 142, and
 - % of RLV – Pages 19 and 21

Regulation 12(5)(e)(commercial or industrial information)

94. Regulation 12(5)(e) states:

'A public authority may refuse to disclose information to the extent that its disclosure would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest'.

95. The purpose of this exception is to protect any legitimate economic interests underlying commercial confidentiality. The exception is broken down into a four-stage test, all four elements of which are required in order for the exception to be engaged:

- The information is commercial or industrial in nature;
- Confidentiality is protected by law;
- The confidentiality is protecting a legitimate economic interest;
- The confidentiality would be adversely affected by disclosure⁵.

The information is commercial or industrial in nature

96. CLSAs are commercial documents which set out the terms for the sale and development of land. The Commissioner has previously found that information in CLSAs, as it relates to a business activity for commercial gain, is commercial in nature. The first element of the test is therefore satisfied.

Confidentiality is protected by law

97. In respect of the second element of the test, in submissions to the Commissioner, the Council advised that, contractually, they are subject to confidentiality obligations incorporated into the CLSA and an obligation of confidence has been assumed by the Council under the common law of confidence.

98. In order to establish a common law duty of confidence the information must have the necessary quality of confidence. If the information is not trivial nor in the public domain, it has the necessary quality of confidence. As the redacted information within the CLSA which the Council have withheld under regulation 12(5)(e) is not trivial nor in the public domain, the Commissioner is satisfied that the information has a confidentiality which is protected by law. In submissions to the

⁵ As adopted by the Information Tribunal in *Bristol City Council v Information Commissioner and Portland and Brunswick Squares Association* [EA/2010/0012, 24 May 2010]

Commissioner the Council also specifically highlighted clause 12.5 of the published CLSA, which states:

'The Seller undertakes to keep all documentation and correspondence with the Buyer and its representatives appropriately secure and designated as confidential and shall exercise all reasonable endeavours to deal with any information requests (made pursuant to the Freedom of Information Act 2000 (or the EIR) accordingly).'

99. The Commissioner is therefore satisfied that in addition to a common law duty of confidence, the Council are also subject to confidentiality obligations imposed by the CLSA.

The confidentiality is protecting a legitimate economic interest

100. The Commissioner considers that to satisfy this element of the exception, disclosure would have to adversely affect a legitimate economic interest of the person the confidentiality is designed to protect. The Commissioner considers that legitimate economic interests could relate to retaining or improving market position, ensuring that competitors do not gain access to commercially valuable information, protecting a commercial bargaining position in the context of existing or future negotiations, avoiding commercially significant reputational damage, or avoiding disclosures which would otherwise result in a loss of revenue or income.
101. The Council has contended that the economic interests to be protected are those of the Council and GMH. It is not clear to the Commissioner as to whether the Council approached GMH to seek their views in respect of the complainant's request. However, as the Council has entered into a CLSA with GMH the Commissioner accepts that the economic interests to be protected include those of GMH (and by extension those of Harborough Invest Inc).
102. In submissions to the Commissioner the Council advised that the information was still current in that the sale had not completed and was (at the time of the request and at the time of providing submissions to the Commissioner) subject of ongoing litigation. The Council contended that if the specific redacted parts of the information were disclosed then it would be damaging to the Council and the other parties to the CLSA as they indicate the commercial values of the sale of land. The Council explained that, *'whilst the CLSA was entered into in 2017, as some of the redacted information is expressed in percentages, the particular sums could still be calculated and is therefore still current'*.
103. The Council explained that confirming the caps associated with construction and professional fees *'would undermine the ability of the*

buyer to participate in potential further purchase if the terms they agreed with the Council were made available under the EIR regarding an agreement which is yet to complete. It would also benefit and assist competitors of the parties and would therefore distort competition'.

104. The Council advised that the information within the Development Financial Appraisal was also still relevant as completion of the land sale and the transfer of the land had not yet been triggered. The Council explained that whilst the figures are from several years ago, *'again, particularly as they include percentage terms, they are still current and it would be damaging to all the parties in allowing them to participate freely in the sale and purchase of land if they were disclosed'*. The Council advised that they had taken into account the views of the other parties to the CLSA and they had confirmed they consider the redacted information to be commercially sensitive in nature.
105. The Commissioner accepts that disclosure of the withheld information at the time of the complainant's request would have adversely affected the Council's economic interests and those of the other parties to the CLSA, for the reasons set out by the Council above. In particular, disclosing the withheld information whilst the proposed sale was not completed and subject to ongoing litigation would have revealed clauses/terms agreed by the Council and GMH which could have been advantageous to competitors.

The confidentiality would be adversely affected by disclosure

106. The Commissioner considers that although a necessary element of the exception, once the first three elements are established, he considers it is inevitable that this fourth element will be satisfied. Disclosure of truly confidential information into the public domain would inevitably harm the confidential nature of that information, and would also harm the legitimate economic interests already identified. Consequently, the Commissioner considers that the Council were entitled to engage regulation 12(5)(e) to the limited information redacted from the CLSA.

Public Interest Test

107. In common with all EIR exceptions, regulation 12(5)(e) is subject to the public interest test set out at regulation 12(1)(b). Therefore, the Commissioner must consider whether, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the withheld information. Furthermore, regulation 12(2) of the EIR requires a public authority to apply a presumption in favour of disclosure when relying on any of the regulation 12 exceptions.

Complainant's public interest arguments

108. In submissions to the Commissioner, the complainant made detailed arguments for the disclosure of the CLSA. It should be noted that at the time of providing the submissions, the Council was (erroneously) withholding the CLSA in its entirety under section 43(2) of the FOIA.

109. The complainant contended:

'The GMH CLSA is prejudicial to vulnerable community. GMH obtaining the land for its 900 million development for 3 million is outrageous. Anyone with a calculator could just do the math on the costs and potential resale value of the proposed 512 new homes in the development. The offshore corporation GMH owns the adjoining Unisys twin tower site. The Council's officer cheaply obtained adjoining property on behalf of GMH by abuse of the Council's powers. It is a clear violation, the Council performing unjust CPO on adjoining properties and granted planning permission in 1998 to GMH for their luxury hotel development and allowing GMH Unisys property to stand empty, blighted and derelict for over 25 years until the company could achieve its aim and take over the entire property by engaging in prejudicial CLSA'.

110. The complainant contended that the Council has a best value duty *'which it is not meeting with a sale price of less than 5% of the actual land value'*. The complainant stated that the Council's officers *'have embarked on a private action in the Chancery, concerning a private CLSA agreement, with an offshore company in Luxembourg. These officers are obtaining property cheaply for private interests'*. The complainant advised the Commissioner that she had been informed that the Council will not abandon the CLSA because they would have to pay GMH offshore corporation £30 million if the Council did not go through with the CLSA.

111. The complainant advised that *'the development has never been tendered and the alleged 3-4 million sale price could certainly be reached'*. The complainant contended that *'the valuation and price in the CLSA must be disclosed. It is a fundamental principle of trust law that a beneficiary must be able to enforce the trust and to make the trustee account for his conduct in the administration of the trust. To allow the beneficiary to enforce the trust, he must receive sufficient information about the trust assets. Grave maladministration of the Stonebridge Complex Trust has taken place'*.

112. In submissions to the Commissioner the complainant made serious allegations against the Council and its involvement with the CLSA. The complainant stated:

'The proposed CLSA is abuse of authority, foul play and discrimination, which is unlawful under the prior Race Relations Act 1976, and the current Equality Act 2010. The proposed development is both unconscionable and discriminatory, since the proposed land sale and luxury property development and gentrification in an disadvantaged urban area with limited school places, is contrary to the public interest. The theft by deception and wholesale sell-off of the community's property, to a gentrification and luxury development project that causes the community's dispersal, will have detrimental social costs'.

113. The complainant noted in her submissions to the Commissioner that other local authorities have published their CLSAs, specifically highlighting the CLSA in respect of land at the West Kensington and Gibbs Green Estates, London, W14, as published by The London Borough of Hammersmith and Fulham (CLSA dated 23 January 2013)⁶.

114. The complainant contended that:

'The contrast of sale terms and conditions must be clear and fair and comply with all relevant legislation and clearly state the contracts termination rights. The fact that Brent Council officers would make a private CLSA with an offshore corporation for approximately 5% of the actual land value and sign a £30 million caveat for a penalty, represents ten times the alleged £3 million value of the contract for sale and would make the private CLSA worth looking into and the matter is clearly in the public interest'.

115. In contending that disclosure of the CLSA is in the public interest, the complainant stated that, *'the CLSA with GMH corp could still be potentially overturned. There are no lawful transaction that cannot be tainted by fraud or deceit and set aside. Additionally, it is clear from some of the testimony in the Chancery that the community beneficiaries have an interest'.* The complainant contended that disclosure of the CLSA *'would be very helpful in allowing the community to understand the present situation and discuss the future of the Bridge Park development'.*

Council's public interest arguments

116. In submissions to the Commissioner the Council advised that in their revised response under the EIR they had *'considered the public interest and the balance of disclosure against upholding the exception'.* They

⁶ [clsa - main body.pdf \(lbhf.gov.uk\)](#)

stated that they had carefully balanced the need to be open and transparent about the decisions taken by the Council and appreciated that *'there is an inherent public interest in the development of land, particularly in relation to community projects'*. However, the Council contended that they considered that the public interest had been served by the disclosure of *'the vast majority of the CLSA'*. The Council stated *'the terms of the CLSA have been disclosed in full, allowing the public to understand the agreement between the parties and only very limited information has been redacted'*.

117. The Council noted that the CLSA is a binding contract, and that prior to entering into legal relations, the Council undertook their due diligence regarding the status of the buyer. *'Further, in executing the contract Council has complied with the Council's Standing Orders in relation to entering it'*. The Council advised that both parties entered into the CLSA in good faith and for the benefit of the Brent community. The Council stated that *'it is wholly wrong and inappropriate to assert that any of the Council Officers have acted fraudulently in relation to this transaction, or that Officers at Brent profit personally in any way'*.

118. The Council also stated that the complainant's allegations about proceeding without scrutiny or transparency were similarly *'factually incorrect'*. The Council advised that they have consulted with residents and ensured that the outcome of the consultations and any decision taken after the consultation, was reported to Cabinet members. The Council stated:

'The Council has been transparent in relation to this transaction – details of the CLSA have been set in the 2013 cabinet report. The public are able to challenge any decision taken by the Council by way of Judicial Review. Furthermore – this matter was heard at trial, and no allegation or suggestion of fraud or impropriety were suggested by the Judge or the defendants'.

119. In response to the complainant's allegations that the Council had not complied with their best value duty, the Council advised the Commissioner that they had negotiated the CLSA to obtain best value and had not settled on a fixed price. The Council explained that, *'the price can only be settled once the developer has obtained outline planning permission, with no transfer of land taking place beforehand. The simple metric is that if the developer increases the quantum of their residential development then Brent will get a higher sale price for its land'*. Furthermore, the Council stated that they are under a statutory duty to ensure that they obtain the best consideration reasonably obtainable. Accordingly, they are not able to sell their property assets below market value except for where the Secretary of State allows, which has not been the case in this matter.

120. As regards the complainant's contentions in respect of the sale price, the Council advised the Commissioner that there is no fixed sale price in the CLSA, or trustee relationship. The final sale price will be determined after the developer has achieved outline planning permission at their own cost for the entire Bridge Park development and the Planning Condition contained within the CLSA has been satisfied. The Council explained that the sale of part of the property to developers by way of the CLSA was the only mechanism whereby the Council was able to pay for a new Bridge Park Centre, funded in part by the enabling residential/commercial development.
121. The Council contended to the Commissioner that *'there is a public interest in maintaining a confidential space in which commercial agreements can be entered into to ensure that the market is competitive and the Council can achieve value for money'*. The Council advised that the redacted information in the CLSA *'is still current and will not crystallise until the sale completes, meaning the public interest favours upholding the exception at this stage'*. Therefore, the Council advised that they considered that although there is an inherent public interest in the development of land, particularly in relation to community projects, the stronger public interest was in maintaining the exception to protect the commercial interests of the Council and the parties.

Balance of the public interest

122. The Commissioner would note that a central plank of the complainant's public interest case for disclosure of the CLSA (and indeed the other information which she has requested) is her contention that SPC was held on trust by the Council, specifically in favour of the Afro Caribbean community. However, that is not correct and as noted previously, the Courts have held that the Council are sole legal and beneficial owner of SPC. The Commissioner would also note that the complainant has made several serious allegations of wrongful or improper conduct or action against the Council and Council staff, all of which have been addressed and categorically rebutted by the Council in their detailed submissions to the Commissioner. Therefore, when seen in the actual factual and legal context, the public interest case for disclosure of the CLSA is inevitably not as strong as contended by the complainant.

123. The Commissioner notes that in his judgment, Mr Green QC commented:

'The suggestion that Brent are "profiting" from the sale is unfounded and , in any event, Brent cannot sensibly "profit" from a sale of its assets as it is statutorily required to reinvest proceeds of sale for the benefit of the local community. Nevertheless, I understand the Defendants' dismay at seeing a large part of their creation sold off for

private development, even if this is necessary in order to gain an enhanced facility for the community'.

124. However, whilst many of the complainant's arguments are misconceived or unfounded, the Commissioner recognises and appreciates the very real and legitimate public interest concern that lies behind them. As detailed earlier (paras 9-14) the Council's plans for developing SPC have been very controversial and were opposed by members of the local Afro Caribbean community. The Commissioner notes the comments made by one of the local community campaigners that members of the Afro Caribbean community '*are children of the Windrush generation*' and that SPC '*is an iconic place for the black community*'. The complainant has highlighted her concerns about '*gentification*' and that the project will lead to dispersal of the local Afro Caribbean community, with resultant detrimental social costs.
125. The Commissioner notes that the term '*gentrification*' is a somewhat loaded one which does not lend itself to simple definition. When first coined by British sociologist Ruth Glass in 1964, it was intended to refer specifically to residential development similar to that experienced by poor workers in urban London neighbourhoods as the middle class ('*landed gentry*') moved in. In common parlance it has retained that definition and can be described as the process whereby the character of a poor urban area is changed by wealthier people moving in, improving housing, attracting new businesses and often displacing the current inhabitants in the process. The term is often associated with economic displacement and encompasses not only residential changes but also socioeconomic and racial identity ones as well.
126. '*On the positive side, gentrification often leads to commercial development, improved economic opportunity, lower crime rates, and an increase in property values, which benefits existing homeowners. On the negative side, it can lead to the loss of affordable housing, which primarily impacts renters and can cause the displacement of the existing community*'⁷.
127. Given the prominence of the Windrush scandal (the treatment of the individuals who arrived in the UK from Caribbean countries between

⁷ [What Is Gentrification? - The Pros and Cons of Neighborhood Revitalization \(housebeautiful.com\)](http://housebeautiful.com)

1948 and 1971 and who became known as 'the Windrush generation')⁸ and the Black Lives Matter movement in recent years, the Commissioner considers that concerns around economic displacement of urban populations, particularly those with alleged racial inequality, carry a strong and important public interest in transparency and accountability.

128. Regardless of the legal status of SPC, the Council's plans for redevelopment of the same are clearly of considerable concern to some in the local Afro Caribbean community, though the Commissioner is mindful of the High Court judgement's findings as to the extent of the community opposition to the Council's planned redevelopment of SPC:

'There is no evidence that shows that HPCC or the Defendants either now or at the material time are synonymous with the "community". Clearly, they were representative of the local black community and their efforts ensured that Brent did not suffer the same fate as Brixton in 1981. They were also instrumental in securing the acquisition and getting the project off the ground. But even at the time, HPCC was not regarded as representative of the whole diverse local community'.

129. The judgement also noted that the Council carried out a consultation in 2017 to order to update the local community on the progress of the redevelopment proposals and to seek input on the design of the new leisure centre. Some 750 responses were received and these showed strong support for the proposals and identified further community facilities that the local community would be interested in seeing in the local area.

130. Nevertheless, given the historical and cultural importance of SPC and the nature of the redevelopment planned, i.e. the selling off of part of the site to GMH, the Commissioner considers that the CLSA carried a clear and compelling public interest in disclosure to meet the necessary and appropriate transparency and accountability of the Council's redevelopment plans. It is therefore disappointing and unfortunate that the Council originally sought to withhold the CLSA in its entirety (albeit erroneously under section 43(2) of the FOIA) in response to the complainant's request.

131. Had the Council maintained this position as regards the revised application of regulation 12(5)(e) the Commissioner would have found that the public interest balance favoured disclosure of most of the

⁸ [Windrush generation: Who are they and why are they facing problems? - BBC News](#)

information contained in the CLSA. However, to their credit, following advice from the Commissioner during his investigation of this case, the Council reconsidered their position and voluntarily provided the complainant (and the world at large) with a redacted copy of the CLSA. In so doing the Council have followed what is usual and accepted practice by local authorities, as the complainant highlighted in submissions to the Commissioner.

132. The Commissioner is satisfied that the disclosure of the redacted CLSA, with only a small amount of information residually exempt under regulation 12(5)(e) (see para 93 above) proportionately and appropriately meets the legitimate and due public interest in transparency and accountability of the Council's agreement with the third parties. In respect of the small amount of information redacted for regulation 12(5)(e), the Commissioner considers that the public interest in maintaining the exception outweighs the public interest in disclosure of the specific small amount of information. This is because, as the Council have contended, the redacted information retains a commercial sensitivity whilst the CLSA is still current and it would not be in the public interest for information to be prematurely disclosed which would prejudice the Council's efforts to achieve best value for money.

133. Before proceeding to consider the Council's responses to the other specific information requested by the complainant, the Commissioner notes that many of these specific requests are predicated on the complainant's contention that the Council held SPC on trust. As the Courts have confirmed, this contention is not correct. Consequently, as the Council have noted in submissions to the Commissioner, *'the information that [redacted] assumes would be held by the Council to prove her assertions does not exist'*.

'Copies of the Business rates, the re-evaluation and any business rate cancellations for the 37 Stonebridge Park complex business unit for the years 2016-2020'.

134. The Council have advised the complainant that their technical team have searched the Business rates database and there are no recent assessments for 37 Stonebridge Park. The only such records held date back to 1995 and 1996. The Commissioner is, in the absence of evidence to the contrary, therefore satisfied, on the balance of probabilities, that the Council do not hold the specific information requested.

'Document that lists all the individuals who are acting as trustees for the Stonebridge Park Complex NW10 ORG, whilst Brent Council are acting as custodians of the trust'.

135. The Council have confirmed that they do not hold such a document and the Commissioner is satisfied that the Council would not hold such a document for the reasons explained above (i.e. that SPC is not held on trust).

'If you determine the sole trustee of the Stonebridge Park Complex is Mr Leonard Johnson can you please provide a document that confirms this'.

136. In their revised response to the complainant the Council advised that they do not believe that SPC is held on trust and that they do not hold such a document. The Commissioner is satisfied, since SPC is not held on trust by the Council, that they do not hold such a document.

'Copy of Covenant document dated circa 1982 for SPC'.

137. In their revised response to the complainant the Council provided a copy of the legal charge which contained the covenant in favour of the GLC, dated 21st June 1982. The Commissioner is satisfied that the Council have provided the complainant with the information requested.

'Original copy of the title deed from 1982 for SPC, an original copy of which would have the Name Mayor of Bromley on the title'.

138. The Council have confirmed to the complainant that the title to SPC was never held by the London Borough of Bromley. The Commissioner is satisfied that the Council does not hold the information requested.

'Document which records release of covenant and the transfer of the custodianship of the assets from the Mayor of Bromley to the Mayor of Brent'.

139. In their revised response to the complainant the Council explained as follows:

'The Property has never been owned by The London Borough of Bromley. The Council entered into a Legal Charge in favour of the Greater London Council. The London Borough of Bromley is the successor in title to the London Residuary Body which is the successor in title to the Greater London Council. The Legal charge contained covenants. The entries registered against title number NGL426015 relating to this charge were cancelled by the Land Registry as a result of an application made by Brent Council accompanied by a DS1 Form sealed by the London Borough of Bromley. In the DS1 Form the London Borough of Bromley acknowledged that the property was no longer charged as security for the payment of sums due under the charge. The charge was therefore formally released'.

140. Given the Council's above explanation to the complainant, and in the absence of evidence to the contrary, the Commissioner is satisfied that the Council does not hold the information requested.

'Document which records the Release and transfer of the custodianship of the assets from the trustees HPCC/BPCC or other trustee of the property to the Mayor of Brent'.

141. In their revised response to the complainant, the Council stated:

'Brent Council does not believe that there has been a transfer of the custodianship of the assets from the trustees HPCC/BPCC or other trustee of the property to the Mayor of Brent and therefore no consultation about such a transfer has taken place. The documents relating to the cancellation of the entries relating to the GLC Charge that were previously against registered title NGL426015 are the attached Forms DS1 and DS2'.

142. Given the above response from the Council, and the fact that the Council do not hold SPC on trust for any party, the Commissioner is satisfied that the Council does not hold the information requested.

'Document proof of the GLC charge Release with the Mayor of Bromley which records the evidence of consultation with the transfer of the custodianship of the assets from the trustees HPCC/BPCC or other trustee of the property to the Mayor of Brent'.

143. In response to this request the Council repeated their response to the complainant's previous request. The Commissioner is satisfied that the Council does not hold any such *'document proof'*, for the same reason as stated in paragraph 136 above.

'Document that confirms that Brent Council has the power and authority to disburse land or other assets owned by Steep Village War Memorial Club'.

144. The Council advised the complainant that *'as far as we are aware, Brent does not believe that it has the power and authority to disburse land or other assets owned by Steep Village War Memorial Club'*. Consequently, since the Commissioner is not aware of evidence to the contrary, he is satisfied that the Council does not hold any such document.

'Annual reports for SPC for the most recent 3 years'.

145. In their revised response to the complainant of 15 November 2021, the Council asked the complainant to provide clarification on what annual reports she was seeking. However, the Commissioner notes that in her request for an internal review of 18 March 2020 (in response to the

Council's original response of 16 March 2020 – the erroneous FOI response), the complainant had provided the Council with clarification.

146. In her internal review the complainant advised, *'specifically, could you please provide the annual reports for the rent and service charge for the occupied Business units at Technology House and for business hire or rental at the Stonebridge Park Complex over the last 3 years. Could you also provide me with the itemised cost for any maintenance and repairs carried out on the business units over the last 3 years'*.

147. To be clear therefore, the Commissioner is satisfied, subject to the exception noted below, that the Council, in their revised EIR response to the complainant of 15 November 2021, correctly addressed the complainant's umbrella information request of 16 February 2020 and her subsidiary requests for specific information made under the same request.

148. The exception to this is the request for the annual reports for SPC, for which the complainant had previously provided the Council with the requested clarification (paragraph 146 above). Therefore, if the Council have not already done so, they will need to respond to the complainant's clarified request for the annual reports (as specified in paragraph 146 above).

Procedural matters

149. Regulation 14(3) of the EIR requires a public authority to provide a requester with a refusal notice specifying the exceptions within the EIR upon which they are relying.

150. In this case the Council originally considered the complainant's request of 16 February 2020 under the FOIA, when in fact the correct legislative regime was the EIR. Therefore, the Council breached regulation 14(3). However, as the Council reconsidered the request during the Commissioner's investigation, and provided the complainant with a revised response under the EIR, the Commissioner does not require the Council to take any steps to remedy this breach.

Other matters

151. The Commissioner is particularly grateful for the detailed and comprehensive submissions provided by both parties in this complex case, which were of considerable assistance to his consideration of the matter. The quality and standard of the Council's submissions was exemplary.

Right of appeal

152. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504
Fax: 0870 739 5836
Email: grc@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

153. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

154. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Gerrard Tracey
Principal Adviser
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF